

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA ex rel.
GARY BRUNSON, DONNA BUSCHE, and
WALTER TAMOSAITS,

Plaintiffs,

v.

BECHTEL NATIONAL INC.; BECHTEL
CORPORATION; URS CORPORATION; and
URS ENERGY & CONSTRUCTION, INC.,

Defendants.

No. 2:13-CV-5013-EFS

ORDER UNSEALING FILINGS

The Court has analyzed each sealed document in this case to determine whether sealing is justified. Based on that review, the Court finds that a number of documents should be unsealed at this time and directs unsealing as outlined below.

"Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes." *Hagestad v. Tragesser*, 49 F.3d 1430, 1433-34 (9th Cir. 1995) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)). There exists, however, a "strong preference" for public access to court documents, and courts are to begin with a presumption that documents in the judicial record should be accessible to the public. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d

1 1092, 1097 (9th Cir. 2016). When documents have been placed under seal
2 based on general justifications, rather than an individual analysis of
3 each document, it may be appropriate for a court to conduct a review
4 to determine whether sealing is justified in each instance. See
5 *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1186 (9th Cir.
6 2006). "[F]actors relevant to a determination of whether the strong
7 presumption of access is overcome include the 'public interest in
8 understanding the judicial process and whether disclosure of the
9 material could result in improper use of the material.'" *Hagestad*, 49
10 F.3d at 1434 (quoting *EEOC v. Erection Co.*, 900 F.2d 168, 170 (9th
11 Cir. 1990)).

12 The first class of documents under seal in this case are filings
13 by the Government and corresponding orders by the Court that were
14 entered prior to settlement. These filings primarily consist of
15 motions by the Government requesting extensions of time to intervene
16 and orders by the Court addressing these requests.

17 The Court notes that these documents were appropriately sealed
18 when filed due to the application of the False Claims Act sealing
19 requirement. See 31 U.S.C. § 3730(b). This sealing requirement is
20 designed to facilitate Government investigations of qui tam claims
21 under the False Claims Act prior to the Government's decision to
22 intervene. See *United States ex rel. Lujan v. Hughes Aircraft Co.*, 67
23 F.3d 242, 245 (9th Cir. 1995). After intervention and settlement,
24 however, the False Claims Act itself provides no indication that pre-
25 intervention filings must remain under seal. See generally *id.*; see
26 also *Under Seal v. Under Seal*, 326 F.3d 479, 486 (4th Cir. 2003).

1 Accordingly, the Court has weighed whether the contents of these
2 filings continue to warrant sealing.

3 Weighing all interests, the Court finds that partial unsealing
4 is appropriate. Accordingly, ECF Nos. 9, 12, 15, 17, 18, 19, 20, 21,
5 22, 23, 27, 29, 31, and 33 will be unsealed. ECF Nos. 8, 11, 16, 24,
6 26, 28, 30, and 32 will be unsealed **in part**, with the memoranda in
7 support of those filings remaining under seal due to the inclusion of
8 confidential information.

9 Second, the Court addresses filings related to attorney fees.
10 Upon review, the Court finds that some of these filings should be
11 unsealed.

12 Counsel for Relators object to the unsealing of some documents
13 related to attorney fees based on unfounded accusations and
14 inflammatory language contained therein. The Court finds, however,
15 that accusations and inflammatory language, alone, are an insufficient
16 basis to justify sealing. *See Kamakana*, 447 F.3d at 1186. Relators'
17 responses to the accusations will also generally be unsealed, and "[a]
18 decent newspaper will not publish . . . accusations without also
19 publishing the skepticism of [the accuser's] credibility." *In re*
20 *McClatchy Newspapers, Inc.*, 288 F.3d 369, 374-75 (9th Cir. 2002).
21 Relators have not submitted evidence of specific prejudice or argued
22 other bases to justify sealing.

23 Still, as noted above, the Court recognizes that multiple
24 filings made on behalf of Mr. Brunson by his attorney, Mr. Guyer,
25 contain inflammatory and accusatory language, primarily directed
26 towards counsel for Relators. The Court therefore notes that it has

found no basis to support accusations of misconduct made against counsel for Relators, and finds that Relators' responses to these accusations will generally be sufficient to create a clear and balanced record. Any media interested in balanced reporting would publish both. Any reasonable person would understand these allegations were utterly without merit. The Lambert Firm has conducted itself ethically in this case.

As such, the Court orders unsealed the documents filed at ECF Nos. 50, 72, 79, 86, 87, 90, 101, 107, 108, 112, 115, 116, 117, 118, and 120.

All other sealed documents will remain under seal based on confidential material contained within those filings, as explained in the Court's sealed order at ECF No. 135.

Accordingly, **IT IS HEREBY ORDERED:**

ECF Number	Unsealing Directive
8	Motion to be unsealed, memorandum will remain under seal
9	Order to be unsealed
11	Motion to be unsealed, memorandum will remain under seal
12	Order to be unsealed
15	Minute entry to be unsealed
16	Motion to be unsealed, memorandum will remain under seal
17	Order to be unsealed
18	Motion to be unsealed
19	Motion to be unsealed
20	Supplemental memorandum to be unsealed

21	Order to be unsealed
22	Minute entry to be unsealed
23	Order to be unsealed
24	Motion to be unsealed, memorandum will remain under seal
25	Order to be unsealed
26	Motion to be unsealed, memorandum will remain under seal
27	Order to be unsealed
28	Motion to be unsealed, memorandum will remain under seal
29	Order to be unsealed
30	Motion to be unsealed, memorandum will remain under seal
31	Order to be unsealed
32	Motion to be unsealed, memorandum will remain under seal
33	Order to be unsealed
50	Order to be unsealed
72	Motion to be unsealed, attachment to remain under seal
79	Motion to be unsealed
86	Motion to be unsealed
87	Objection to be unsealed
90	Order to be unsealed
101	Motion to be unsealed
107	Order to be unsealed
108	Response to be unsealed
112	Reply to be unsealed
115	Motion to be unsealed

116	Sur-reply and attachments to be unsealed
117	Opposition to motion to be unsealed
118	Order to be unsealed
120	Sur-sur-reply to be unsealed

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel.

DATED this 26th day of June 2017.

s/Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge